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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

JAMES R.,

Petitioner,

v.

THE SUPERIOR COURT OF
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F065326

(Super. Ct. Nos. 516042, 516043 &
516044)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.
Ameral, Judge.

Stephen L. Foley, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County
Counsel, for Real Party in Interest.

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* Before Levy, Acting P.J., Kane, J., and Detjen, J.

James is the father of three children ranging in age from three to six years. In July 2012, the juvenile court terminated James's reunification services at a contested 12-month review hearing (Welf. & Inst. Code, § 366.21, subd. (f))¹ as to all three children and set a section 366.26 hearing to implement a permanent plan. James challenged the juvenile court's orders by extraordinary writ petition (Cal. Rules of Court, rule 8.452), contending that the juvenile court erred in finding that it would be detrimental to return the children to his custody and that he was provided reasonable services. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In February 2011, James contacted the Stanislaus County Community Services Agency (agency) and reported that Rachael,² the mother of his children, was hitting the children and that he was afraid to leave the house for fear of what she might do. He said Rachael also hit him in front of the children and that she suffers from bipolar disorder, schizophrenia and depression but did not take her medication. In addition to James's three children, Rachael also had four older children from other relationships living in the home; 13- and 9-year-old daughters and 11- and 6-year-old sons. A social worker from the agency spoke to the children who reported physical fighting between Rachael and James. They said it scared them and they did not feel safe at home. After Rachael declined voluntary services, the agency detained all seven children and placed them in foster care.

In March 2011, the agency filed an original dependency petition alleging that Rachael's untreated mental illness and ongoing domestic violence between Rachael and

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Rachael also filed a writ petition which is pending before this court (F065349).

James placed the children at risk of serious physical and/or emotional harm. In an amended petition filed after the children were removed, the agency alleged that Rachael's 11-year-old son disclosed that on one occasion Rachael threw a flip flop at him, hitting him in the head and causing bruising. He also stated that Rachael tried to kill him, chased him with an iron and a knife, choked him and tried to pull his hair. He said that during their first visit, Rachael pulled his arm and he did not want to visit anymore. He also reported that James threw him on the ground and kicked him in the penis.

The juvenile court exercised its dependency jurisdiction at a dispositional hearing in May 2011 and ordered James and Rachael to complete programs in parenting and domestic violence. In addition, Rachael was ordered to complete a clinical assessment, take her medication as prescribed and sign a release of information so that the agency could track her compliance. James was also ordered to complete individual counseling to address issues related to domestic violence as a victim. The juvenile court set the six-month review hearing for October 2011.

Over the ensuing months, James and Rachael participated in their services but made little progress in domestic violence counseling. Rachael denied that she and James fought and stated that her children either lied for attention or were confused when they reported the violence they observed and experienced. In addition, she was controlling at the family visits and appeared to intimidate James and the children. She yelled and screamed at her children, James, the social workers, foster parents and staff, and reportedly scratched James in the neck and face. For his part, James completed a 52-week domestic violence batterer's intervention program as a condition of probation, however, had not shown any insight into his role as a victim. He appeared to be afraid of Rachael and did not intervene when she yelled in front of the children. His therapist reported that he was codependent and remained hopeful of maintaining his relationship with Rachael without recognizing or applying healthy boundaries. The agency was also

concerned about Rachael's mental health status in light of reports that she engaged in self-injurious behavior such as tearing off her fingernails and hitting herself with a bat in the knees and stomach.

In its report for the six-month review hearing, the agency advised the juvenile court against returning the children to James and Rachael's custody, but recommended that the juvenile court offer them six more months of services.

The six-month review hearing was continued and conducted in December 2011. Meanwhile, Rachael was evaluated by psychologist Cheryl Carmichael who did not believe that any of Rachael's mental health diagnoses accounted for her behavior. Instead, Dr. Carmichael questioned whether Rachael's violent outbursts were related to a temporal seizure disorder or to postpartum depression. She recommended that Rachael receive a thorough medical and neurological evaluation. Also during this interim period, the agency filed a petition pursuant to section 388 asking the juvenile court to suspend visitation between Rachael and the children until she could control her negative behavior.

In December 2011, the juvenile court convened a combined hearing to adjudicate the agency's section 388 petition and recommendation to continue services. The agency withdrew its 388 petition and the juvenile court continued James and Rachael's services to the 12-month review hearing which it set for April 2012. The juvenile court also ordered the agency to file an amended case plan. The amended case plan required Rachael to complete a neuropsychological evaluation and to participate in one weekly therapeutic supervised visit with the children which was to be conducted separately from James's visit.

In April 2012, the agency filed its report for the 12-month review hearing and recommended that the juvenile court terminate James and Rachael's reunification services and set a section 366.26 hearing. The agency reported that neither parent had completed their court-ordered services or made substantial progress in resolving the

situation that necessitated the children's removal. In addition, though James reportedly moved out of the family home sometime in December 2011, he returned after a short time and he and Rachael remained an intact couple.

The 12-month review hearing scheduled for April 2012 was continued and conducted as a contested hearing in July 2012. Meanwhile, neuropsychologist Randall Epperson issued his written evaluation of Rachael. Dr. Epperson reported that Rachael has a history of idiopathic seizure disorder as well as traumatic life experiences including rape at the age of 12, possible subsequent sexual molestation, an abusive first marriage, and spousal domestic violence. He did not see any indication of psychosis suggestive of schizophrenia and Rachael did not report regular cycling of her mood suggestive of bipolar disorder. Dr. Epperson concluded that Rachael's domestic violence incidents were not the result of temporal lobe epilepsy, but rather were related to "borderline personality structure and unresolved abuse from her past which ... led her to be hyperalert and reactive to any perceived external threat." He reported that he "experienced some of her underlying aggressiveness and quasi-paranoid thinking" during the evaluation. He also concluded that Rachael's "periodic domestic violence episodes occur when interacting with an unstable partner relationship and under the stress of ... children and ... custody issues." He recommended psychiatric treatment.

The contested 12-month review hearing was conducted over several days in July 2012. The juvenile court heard from multiple witnesses, including social worker Katherine Croom who testified that Rachael denied there was ever any domestic violence between her and James. Ms. Croom testified that James made some progress in that he completed the parenting class and had only one class left to complete the domestic violence as a victim counseling. However, she found it problematic that he remained in a relationship with Rachael who had not completed domestic violence counseling. Ms. Croom said she spoke to James in May 2012 and he said that if someone had told him

that he had to sever his relationship with Rachael, he would have done so a long time ago. However, Ms. Croom said that she told James he needed to sever that relationship and was present when another social worker told him the same. She also testified that James addressed the negative impact domestic violence has on children in his counseling. Despite that, James believed he was stuck in his relationship with Rachael and wanted to preserve it. Ms. Croom further testified that James never asked her for assistance with housing or told her he was homeless. He did, however, talk about living with his mother.

Rachael testified that she completed 28 of the 52 domestic violence classes and intended to continue living with James. She denied there was any domestic violence in January or February of 2011. She said the last time they engaged in physical violence was in 2005 or 2006 and they last engaged in verbal violence in 2009. James did not testify.

At the conclusion of the hearing, the juvenile court found that it could not return the children to James and Rachael's custody without creating a substantial risk of detriment to the children because, as the juvenile court stated, "[James] has ongoing codependency issues that have not been properly addressed. He and [Rachael] continue to live together. They are both in denial, serious denial, and the children cannot be safely returned" The juvenile court also found that James and Rachael were provided reasonable services and there was not a substantial probability the children could be returned to their custody in the two months remaining before September which marked 18 months from the time the children were originally detained. Accordingly, the juvenile court terminated James and Rachael's reunification services and set a section 366.26 hearing to implement a permanent plan. These petitions ensued.

DISCUSSION

I. Detriment

James contends that there was insufficient evidence to support the juvenile court's finding that it would be detrimental to return his children to his custody. He asserts that he substantially completed his court-ordered services and would have separated from Rachael had the agency told him to do so and assisted him in accomplishing it. He asks this court to order that his children be returned to his care. We decline to do so, concluding that substantial evidence supports the juvenile court's finding that it would be detrimental to the children for the reasons we now explain.

There is a statutory presumption that a dependent child will be returned to parental custody at each review hearing unless the juvenile court determines that to do so would place the child at risk of harm. To that end, section 366.21, subdivision (f) (hereafter subdivision (f)), the statute governing the 12-month review hearing, provides as relevant here:

“The court shall order the return of the child to the physical custody of his or her parent ... unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent ... would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.” (§ 366.21, subd. (f).)

Subdivision (f) further provides that the parent's failure “to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.” (§ 366.21, subd. (f).)

On a challenge to the sufficiency of the evidence to support the juvenile court's finding of detriment, we determine whether there is substantial evidence on the record to support the finding. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.) In so doing, we view the record favorably to the juvenile court's determination and draw all

reasonable inferences in support of it. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.)

In this case, James's children were removed because Rachael physically victimized the family and James passively allowed her to do it. Instead of utilizing the services provided to learn how to protect himself and the children from domestic violence, James resisted counseling and insisted on maintaining a relationship with Rachael knowing that she had made no progress in addressing her uncontrolled anger. Under subdivision (f), James's failure to complete his court-ordered services is grounds for finding prima facie evidence of detriment. Further, even assuming James had completed his services, his passivity and desire to maintain a relationship with Rachael supports the juvenile court's finding that his children would be at risk of physical or emotional harm if returned to his custody.

II. Reasonableness of Services

James contends that the juvenile court erred in finding the agency provided him reasonable services, citing the agency's failure to help him find housing and separate from Rachael. He further contends that, because the juvenile court's reasonable services finding was error, the court also erred in terminating his reunification services and setting a section 366.26 hearing. James asks this court to direct the juvenile court to continue his reunification services. We decline to do so, concluding substantial evidence supports the juvenile court's reasonable services finding.

The purpose of reunification services is to correct the conditions that led to removal of the dependent child. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) To that end, they must put the family on notice as to what must be accomplished to reunite the family and be specifically tailored to eliminate those conditions. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) Moreover, the department must make a good faith

effort to implement the reunification plan. (*In re John B.* (1984) 159 Cal.App.3d 268, 275.)

The crux of James's argument is, in essence, that if his ability to reunify with the children was contingent on him separating from Rachael, then the agency should have incorporated such a requirement into his reunification plan and then helped him accomplish it. The problem with the first part of his argument is that forcing family separation is incongruous with the goal and purpose of dependency which is to reunify the family. In this case, there was enough evidence apparently to believe that the family could be reunited with assistance. Therefore, there was no reason to include such a requirement. Further, James acquiesced to the stated terms of his reunification plan by never challenging it. Thus, he cannot now claim that the plan as ordered was unreasonable. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 47.)

Further, James's contention that the agency was unreasonable in not helping him find alternative housing lacks merit. First, there is no evidence that James wanted or needed separate housing. On the contrary, he demonstrated by his words and actions that he wanted to maintain his relationship with Rachael. Moreover, there is reason to believe that he could have stayed with his mother as he had done before if he were inclined to leave Rachael. Thus, we find no error in the juvenile court's reasonable services finding or its orders terminating reunification services and setting a section 366.26 hearing.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.